80-650

No.

Supreme Court, U. S.
FILED
OCT 20 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JOHN R. CONNOR, Petitioner,

v.

EDWARD J. FLYNN

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

John R. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey
(201) 762-5587

QUESTIONS PRESENTED

1. Where a party, during the pendency of an appeal in the Appellate Division of the Superior Court of New Jersey, moves before the trial court under Rule 2:5-5(a) Motion to Settle the Record, and where, due to the death of the party, no order is entered disposing of such motion, may the appellate court resume jurisdiction and adjudicate the appeal prior to the substitution of the non-party survivor under Rule 4:34-1(b) where the issues raised by the motion to settle the record remain unresolved by the trial court and, if so, may the appellate court do so without substantially prejudicing the "due process" rights of the non-party survivor in violation of the Due Process Clause of the Fourteenth Amendment?

2. Whether the non-party survivor has a fundamental "due process" right, upon his substitution as plaintiff-appellant under Rule 4:34-1(b), to secure, under Rule 2:5-5(a) Motion to Settle the Record, the transcript he deems necessary for the prosecution of his appeal and to secure transcript which is properly certified and admissable as evidence and, if so, and where said right has been abridged, whether there has been a substantial violation of the "due process" rights of the non-party survivor in violation of the Due Process Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDING ARE:

John R. Connor (Non-party survivor)
380 Wyoming Avenue
Millburn, New Jersey 07041

Edward J. Flynn (Defendant-Respondent)
245 Main Street
Millburn, New Jersey 07041

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

In the matter of

MARY A. CONNOR, Individually
and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff-Appellant,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE

SUPREME COURT OF NEW JERSEY

Petitioner John R. Connor, beneficiary of Decedent Mary A. Connor's interest in the above-entitled litigation, hereby petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey in this case.

JURISDICTION

On June 25, 1980 the New Jersey Supreme Court successively entered Orders dismissing the within appeal on respondent's motion (App. A, infra, p. 1a), dismissing Petitioner's Motion for Summary Reversal of the Appellate Division judgment (App. B, infra, p. 2a) and dismissing Petitioner's cross-motion for certification nunc pro tunc (App. C, infra, p. 3a). On July 23, 1980 the New Jersey Supreme Court denied a Petition for Rehearing (App. D, infra, p. 4a).

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(c). The opinions herein are not reported.

CONSTITUTIONAL PROVISIONS AND COURT RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> No state * * * shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N. J. Sup. Ct. C.P.R. 2:5-5(a) provides:

> If any party questions whether the record fully and truly discloses what occurred in the court or agency below, he shall apply on motion to that court or agency to settle the record. The appellate court, on motion, may review such determination or may, on its own motion, order a correction of the record or may direct the court or agency to do so. The making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion. (emphasis added)

N. J. Sup. Ct. C.P.R. 4:34-1(b) Non-Party Survivors states:

> If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and notice thereof shall be served on parties as provided by R. 1:5-2 and on

> persons not parties in the manner provided by either R. 4:4 (service of original process) or, if the court directs, R. 4:67-3 (service of orders to show cause. (emphasis added)

STATEMENT

In order to relate the facts requisite for an informed decision on the within Petition, it will be necessary to discuss at some length the historical background of this litigation. Encompassing over twelve years now in the New Jersey courts, Connor v. Flynn stands, without peer in the Garden State, when it comes to the corrupt and criminal extremes to which a defendant, aided and abetted by the courts, will resort in order to "win" a case and obstruct a plaintiff in her efforts to obtain a just adjudication of her claims.

The within matter, entitled Mary A. Connor, Individually and as Executrix of the Estate of Mary Ellen Flynn v. Edward J. Flynn,[1] was originally filed in the Chancery

Division of the Superior Court of New Jersey in 1968. A suit for an accounting of partnership profits, plaintiff claimed that her brother, the defendant, had "skimmed" in excess of $200,000.00 in unreported profits from the business of Flynn's Tavern in Millburn, New Jersey over a 20-year period from 1948-1968. This case, hereinafter referred to as Connor v. Flynn, went to trial in 1972.

Originally, plaintiff was represented by Mr. Albert G. Besser, Esq. [Hannoch, Weisman, Stern & Besser, 744 Broad Street, Newark, New Jersey 07102], but due to this attorney's failure to complete discovery -- confirmed eventually in the trial court's opinion -- plaintiff was forced to retain other counsel for trial. The latter (Fred Blackwell, Esq., District of Columbia bar) represented plaintiff during the evidenciary

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[1] Connor v. Flynn, Docket No. C-2565-68 (trial); Docket No. A-2853-74 (Appellate Division); Docket No. 16,605 (Supreme Court)

phase of the trial, but because plaintiff declined to accept a settlement offer, resigned from the case before oral argument. At this point, plaintiff decided not to retain additional counsel but to represent herself pro se. [In point of fact, Petitioner, son of now-deceased plaintiff, was thereafter permitted by the trial court to file all necessary pleadings and briefs and to make all court appearances on behalf of his mother.]

The trial court's opinion, while awarding nominal, compensatory damages of $6,408.80 to plaintiff, decided against her on her claim for an accounting for "skimmed" profits. However, due to the fact that the most signifigant and heavily-contested issue in the case, i.e., whether a partnership legally existed between plaintiff and defendant in the business of Flynn's Tavern, was not decided, but was left undecided, by the trial court, plaintiff elected

to appeal the decision to the Appellate Division of the Superior Court.

* * * * *

What is unique about this litigation is the fact that the defendant went to every unlawful, criminal extreme to literally destroy plaintiff Mary A. Connor's case at both trial and appellate levels.

During the latter phase of the trial litigation, when Petitioner was appearing for his mother in court, John A. Lombardi, Esq., defendant's attorney, submitted an Affidavit to the court wherein he swore under oath that a transcript of a hearing before the New Jersey Division of Alcoholic Beverage Control (A.B.C.) proved that this Petitioner was "completely arrogant, hostile, irrational and arbitrary in all respects"[2] and requested that the court refuse

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[2] The specifics of this and other matters discussed herein are more fully set out in the record which Petitioner has, under Supreme Court Rule 19.1, requested be certified and transmitted to the U. S. Supreme Court.

to allow further appearances by Petitioner for plaintiff. [See: Exhibit "X," Petitioner's Supreme Court Appendix, pp. 34-61A]

Unfortunately for defendant, Petitioner, having long since suspected that transcripts were being "doctored" in this case, had taken the precaution of taping the A. B. C. hearing on a hidden Sony recorder and he filed a corrected verson of the massively-doctored transcript in response to defendant's affidavit. The alteration of transcript is a criminal violation of N.J.S.A. 2A:136-1 (now N.J.S.A. 2C:21-4). The effort to remove Petitioner from the court came to an abrupt end.

* * * * *

The first affirmative attempt to destroy plaintiff's appeal of the trial court's judgment in Connor v. Flynn occurred when plaintiff and Petitioner decided to retain counsel for the specific and limited purpose of securing the entry of a proper form of judgment in this case.

The attorney retained [Robert B. Cherry, Esq., Cherry and Petrie, 152 Market Street, Paterson, New Jersey 07505] took it upon himself, without the knowledge and authority of plaintiff, to file two Notices of Appeal of the Connor v. Flynn decision with the Clerk of the Appellate Division. The first was an appeal from the final judgment, itself, while the second was an appeal from the trial court's order denying plaintiff's motion for a new trial.

Plaintiff, in the meanwhile, totally unaware of Attorney Cherry's filings, had filed her own Notice of Appeal pro se, which the Appellate Division returned to plaintiff because of the Cherry filings.

Petitioner then visited the Appellate Division's clerk's office and discovered that the first Cherry Notice of Appeal from the final judgment had been "voided" by the Clerk while the second Cherry Notice of Appeal was duly docketed. Attorney Cherry,

acting without any authority, and in collusion with the appellate clerk's office, had arranged that Mary A. Connor was to have no appeal from the Connor v. Flynn final judgment on file when the 45-day time limit for docketing such an appeal expired on April 25, 1977. (R. 2:4-1a) All plaintiff was to have on file was a meaningless appeal from a denial of a motion for a new trial!

Plaintiff immediately fired the Attorney Cherry and, on April 25, 1975, returned her pro se Notice of Appeal to the Appellate Division for filing and docketing. The Division Clerk, Elizabeth McLaughlin, then proceeded to "sit on" this notice of appeal for nearly a month, until May 19, 1975, when it was finally filed effective the date of its original receipt in the Appellate Division, or April 21, 1975. [See: Appellant Mary A. Connor's brief filed with the Appellate Division, Appendix C-5]

* * * * *

At first glance, it appeared to plaintiff, and Petitioner, that they had somehow emerged "unscathed" from the attempt by Cherry to destroy their appeal of the Connor v. Flynn judgment. Subsequent events were to prove the assumption unfounded.

An earlier (1972) judgment in a companion case to Connor v. Flynn [Flynn v. Connor, Docket No. C-3138-68] had ordered Flynn's Tavern to be sold at a sheriff's sale. The successful bidder, the defendant Flynn, was compelled to comply with the terms of the Judgment for Partition and had to deposit the entire bid price of $90,000.00 into the trust fund of the Superior Court -- even though he already owned 2/3 of the business versus plaintiff's 1/3 share. The judgment, which was never appealed by defendant, provided that the monies were to remain on deposit with the court as security for plaintiff's affirmative claims against defendant in Connor v. Flynn.

R. 4:57 et seq. governs the procedure for

the deposit and withdrawal of funds from the Superior Court's trust fund and R. 4:57-5 specifically provides that withdrawal of such monies "shall be made only by order of the court, which may be withheld pending expiration of the time to appeal and during the pendency of the appeal."

One year later, on July 13, 1976, plaintiff and Petitioner found out that on May 1, 1975 (during the "interregnum" between the return of plaintiff's pro se Notice of Appeal on April 25, 1975 and its docketing on May 19, 1975), the Clerk of the Superior Court had released the defendant's two-thirds (2/3) share, plus interest, or the amount of $59,198.90, from the trust fund!

Had plaintiff's pro se Notice of Appeal been promptly docketed by the Clerk of the Appellate Division on its April 25, 1975 receipt, such a withdrawal could not have occurred because on April 1, 1975 the Clerk of the Superior Court had notified counsel

for defendant that the release of the monies would "not be approved until the expiration of the time to appeal the order to pay; provided, however, that no appeal is taken." No copy of this letter, or notice of the application, was ever sent to plaintiff, in violation of R. 4:57-5, and plaintiff only discovered the withdrawal a year later after a routine inquiry to the Clerk of the Superior Court on the current status of the fund. [See: Appellant's Motion to Compel Re-deposit of $59,198.90, With Interest, to Superior Court Trust Fund, by Defendant E. J. Flynn et al.[3]]

* * * * *

Failing to destroy plaintiff's appeal outright, via the Cherry maneuver, albeit succeeding in fraudulently removing the $59,198.90 from the court trust fund, the defendant next embarked on a strategy of

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[3] Motion was denied by Justice Robert A. Matthews, P.J.A.D., Part G, Superior Court-Appellate Division, on June 20, 1977.

"doctoring" and otherwise delaying the production of the transcript plaintiff needed for the prosecution of her appeal.

The file in the office of the Clerk of the Appellate Division contains no less than six (6) voluminous motions of deceased plaintiff Mary A. Connor to compel production of the transcript she deemed necessary for the prosecution of her appeal. The filing dates of these motions were: December 9, 1975, February 19, 1976, April 6, 1976, July 19, 1976, November 12, 1976 and January 3, 1977. Every single motion was denied by the Appellate Division and, in particular, by Justice Robert A. Matthews, P.J.A.D., who is the Presiding Judge of Part G which sits in Hackensack, Bergen County.

As a result of the denial of her last transcript motion on January 28, 1977, plaintiff filed her brief and appendix with the Appellate Division on March 14, 1977. On April 29, 1977 defendant Flynn filed a

response brief.

However, plaintiff found herself in the position where she was not only proceeding to appellate review of the trial court's judgment in Connor v. Flynn without all the transcript she had ordered and paid for, but also with transcript whose certifications, for the most part, were legally insufficient.

According to the Administrative Regulations Governing Reporters in the New Jersey Courts, all certified shorthand reporters must use the following form of certification:

> "I certify the foregoing to be a true and accurate transcript of the testimony and proceedings in the above-entitled cause."

With a single exception, not one of the (eight) reporters who transcribed for this case properly certified his or her transcript, employing, instead, various and sundry certification forms wherein they certified only to their "stenographic notes" --

instead of to the testimony and proceedings in Connor v. Flynn. [See: Exhibits "L"-"U" of Petitioner's Supreme Court of New Jersey Appendix]

To plaintiff and Petitioner, reading transcripts that were virtually incoherent in areas of critical testimony, these "free-form" certifications were not erroneous but deliberately contrived to "cover-up" wholesale transcript alteration. Moreover, plaintiff had the evidence to prove her charge of transcript "doctoring."

* * * * *

On May 2, 1977, before filing her reply brief, Mary A. Connor moved, under R. 2:5-5 (a) Motion to Settle the Record in the Chancery Division (trial court) for an order to compel production of transcript. Over the next six months Appellant filed and argued several motions in the trial court, with the last order being entered on November 7, 1977 -- 17 days before the death of plaintiff in Overlook Hospital, Summit,

New Jersey following unnecessary surgery. (App. E, infra, p. 5a)

According to the terms of the November 7, 1977 Order: "Plaintiff's Motion to Settle the Record [was] continued pending the receipt of transcript." (emphasis added)

Specifically, at the time of her death, the following material portions of plaintiff's pending transcript motion remained undecided or unresolved by the trial court: 1) the transcript certifications had not been amended to conform with the required form of certification and 2) plaintiff's pending motion to incorporate two (2) tape recordings [August 17, 1973 and April 27, 1973] into the trial record to prove her allegations of transcript "doctoring," to support her argument for a new trial in the appellate court, had not been decided. Furthermore, Reporter Ira S. Rubenstein had not, in spite of a provision in the aforementioned order of November 7, 1977, turned

over to plaintiff the transcript for the defendant's expert accounting witness, Mr. Richard Goldfinger, C. P. A.

This was the precise posture of Connor v. Flynn when plaintiff Mary A. Connor died suddenly on November 24, 1977 as a result of cardiac shock following unnecessary surgery at Overlook Hospital, Summit, N. J.

* * * * *

[In a separate Petition for Certiorari, filed October 15, 1980 with the U. S. Supreme Court, Petitioner recounts how the trial court, after Mary A. Connor's death, proceeded on the application of Hannoch, Weisman, Stern & Besser to summarily appoint an Administrator to the Estate of Mary A. Connor and how Petitioner, declining to accept the validity of that appointment, appealed the decision in the New Jersey courts.]

By terms of the Last Will and Testament

of Mary A. Connor Petitioner is not only appointed executor of his mother's estate but also is bequeathed her interest in Connor v. Flynn. Immediately after plaintiff's death, Petitioner withheld probate of his mother's will because of an erroneous death certificate. Later, after the trial court's summary action in appointing an administrator, probate was withheld pending a final decision on Petitioner's appeal of that appointment. Petitioner also was of the opinion that it was his duty as executor in pais to protect this estate from an administrator who was, and has proven to be, nothing more than a surrogate for Hannoch, Weisman, Stern & Besser (decedent's former counsel) whose function was to assist that firm in its never-ending fraudulent schemes to plunder decedent's estate, and, in particular, the trust fund in the Superior Court which amounted to approximately $50,000.00.[4]

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[4] On May 11, 1977 Albert G. Besser, Esq. had a $28,657.94 award in attorneys' fees re-

As heretofore related, when plaintiff passed away on November 24, 1977 Connor v. Flynn was pending at the trial court on plaintiff's motion to settle the record. R. 2:5-5(a) Motion to Settle the Record specifically provides that: "The making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion."

No order finally disposing of plaintiff's motion had been entered by the trial court when plaintiff passed away.

Nevertheless, the Appellate Division, on March 8, 1978, proceeded to schedule oral argument on Connor v. Flynn. On April 10, 1978 Petitioner advised Justice John F. Lynch, P.J.A.D., Presiding Judge of Part "A"

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versed by the Appellate Division (monies payable out of the court trust fund); this attorney, in order to give the trial court jurisdiction, filed his motion in the Cherry appeal [A-2714-74] but the decision was handded down in plaintiff's pro se appeal, which carried Docket No. A-2853-74!

of the Appellate Division of the Superior Court of New Jersey that jurisdiction of the case remained in the trial court and that Petitioner was not ready, at that time, to substitute himself as party-plaintiff for Mary A. Connor. (App. F and G, infra, pp. 8-12a) No further action was taken by Part "A" on Connor v. Flynn. [It is pertinent to note at this point that New Jersey has neither a statute nor any court rule that requires the substitution of a non-party plaintiff within a given period of time.]

Petitioner proceeded to duly perfect his appeal of the administrator's appointment [Estate of Mary A. Connor, Docket No. A-4484-77] and the following year, the Appellate Division scheduled oral argument on same for September 11, 1979 -- along, again, with Connor v. Flynn. (App. H, infra, p. 13a)

However, instead of being before Justice Lynch, both appeals were now assigned to Part "G," whose Presiding Judge, Robert A.

Matthews, had heretofore: denied plaintiff Mary A. Connor's several motions for the production of transcript; denied plaintiff's motion to compel defendant Flynn to redeposit the $59,198.90 back into the court trust fund; and declined to rule on Petitioner's motion to disqualify himself from deciding Connor v. Flynn, for reasons of "bias and prejudice" but, instead had another judge of his Part (Ard) deny the motion!

On September 5, 1979 Petitioner advised Justice Matthews (as he had Justice Lynch the year before) that Connor v. Flynn was still legally pending in the trial court and that Petitioner would not appear before him for oral argument on September 11, 1979 because he lacked jurisdiction in the matter. (App. I, infra, p. 15a)

On September 11, 1979, before court commenced, Petitioner, having received no response from the court to his letter of September 5, 1979, again explicitly warned

Justice Matthews, via telegram, that Connor v. Flynn was legally pending at the trial level and that there had still been no substitution of parties for deceased plaintiff Mary A. Connor. (App. J, infra, p. 17a)

* * * * *

Totally failing in their many attempts to negate, destroy or otherwise delay prosecution of this appeal, defendant's next strategy comprised a two-pronged attack on Petitioner's legal position by the Administrator and the court.

On Saturday, September 22, 1979, Petitioner received in the mail a copy of the Appellate Division's judgment in Connor v. Flynn (affirming the trial court's decision), which Justice Matthews had decided, notwithstanding his lack of jurisdiction and the fact that Petitioner had never been substituted for deceased plaintiff Mary A. Connor. (App. K, infra, p. 18a)

On Sunday, September 23, 1979, Administrator Warren secured Petitioner's arrest on a

year-old, outstanding bench warrant which he had secured from the Chancery court when Petitioner, because he was appealing the administrator's appointment, properly declined to attend an estate hearing in court.

The Chancery court, which kept Petitioner incarcerated in jail until Wednesday, September 26, 1979, on that date, ordered Petitioner's indefinite incarceration in jail until he would agree to "turn over" Mary A. Connor's will, and all estate assets, to the court.

In order to gain his freedom, Petitioner was compelled to comply with the court's order, since bail was not available, and he surrendered possession of decedent's will and estate assets, which the court then promptly turned over to the administrator, who then delayed probate until December 4, 1979.

In the interim, the time to appeal the Appellate Division's September 24, 1979 final

judgment in Connor v. Flynn was running.

Administrator Warren, in possession of decedent plaintiff's will, delayed its probate from September 26, 1979 until December 4, 1979 -- November 8, 1979 being the last day for filing an appeal with the New Jersey Supreme Court in Connor v. Flynn.

Petitioner, unable to effect a substitution of parties in that case because of the deliberate delay in probate, took advantage of an exception to the general (New Jersey) probate rule that only a personal representative can litigate for an estate by ordering the Administrator to file an appeal in Connor v. Flynn on October 28, 1979. (App. L, infra, p. 19a)

Naturally, the Administrator refused to file the appeal -- on November 8, 1979, the last day an appeal could have been filed. (App. M, infra, p. 22a)

Petitioner, on the same date, however, was prepared to, and did file with the New

Jersey Supreme Court, his own appeal of the September 24, 1979 Appellate Division judgment in Connor v. Flynn, A-2853-74.

In doing so, Petitioner relied upon an "exception" to the general rule enunciated in Niemaseck v. Bernett Holding Co., Inc., et al., 125 N. J. Eq. 284, 4 A.2d 797 (Ch. 1939) which states that: "[a] residuary legatee can maintain suit for the benefit of the estate when the administrator neglects or refuses to sue." Accord: Buchanan v. Buchanan, 75 N. J. Eq. 274 (E & A, 1909).

The "squeeze" play on Petitioner, engineered by the Administrator and the Justice Matthews, by forceably removing decedent's will from Petitioner's possession and delaying its probate until it was too late to file an appeal, met the same unsuccessful fate as its predecessor -- the "Cherry" maneuver.

Petitioner's as of right (pro se) appeal

to the New Jersey Supreme Court was filed, of necessity, in his capacity as a beneficiary [Connor v. Flynn, Docket No. 16,605]. Petitioner then filed a motion, under R. 2:8-3(a) Motion for Summary Disposition, to reverse the Appellate Division's judgment in Connor v. Flynn and specifically predicated his claim for reversal on the argument that Petitioner's Fourteenth Amendment "due process" rights had been violated when the appellate court decided the case before substitution of parties and under circumstances where the appellate court lacked the necessary jurisdiction in the first place.

On November 20, 1979 Defendant filed a motion which, although it did not challenge Petitioner's "standing" to maintain this appeal as a beneficiary, requested the dismissal of the appeal for lack of a substantial constitutional question.

On December 3, 1979 Petitioner replied to defendant's motion, by submitting in

question form, the identical constitutional issues raised in his brief filed in support of his motion for summary reversal. At the same time, Petitioner also filed a cross-motion for certification nunc pro tunc on the ground that the issue of transcript "doctoring" was a question of "general public importance" sufficient to qualify for certification on the court's own motion, under the doctrine enunciated in Piscataway Assoc., Inc. v. Township of Piscataway, 73 N. J. Eq. 547 (1977).

Petitioner's Motion for a Summary Reversal was "ready" for disposition by the New Jersey Supreme Court as early as the first week of December, 1979 -- however, the court took no action. In the meanwhile, Petitioner filed an appeal of the Administrator's probate of Mary A. Connor's will, which action had the operative effect of suspending the will. Davenport v. Davenport, 68 N. J. Eq. 611 (E & A, 1904). In re Norrell, 137 N. J. Eq. 207

(E & A, 1945). State v. Williams, 9 Gil. 128 (Md. Ct. App. 1850).

* * * * *

Finally, six months later, Petitioner filed a motion in Connor v. Flynn with the Chancery court under R. 2:5-5(a) Motion to Settle the Record, to complete the motion that was pending in this case before that court when plaintiff Mary A. Connor died on November 24, 1977.

Petitioner specifically moved for the following relief:

> * * * for an order: 1) admitting into evidence in the within cause of action a tape recording of the August 17, 1973 hearing before the New Jersey Division of Alcoholic Beverage Control and a tape recording of the April 27, 1973 motion hearing before the Honorable John A. Ackerman, J.S.C. and 2) ordering Ira S. Rubenstein, C.S.R. to transcribe the trial testimony of Richard Goldfinger, C.P.A., within 30 days, and holding him in contempt of court under Rule 1:10-2 for disobeying the court's order of November 7, 1977.

Within one week of this motion being

filed with the trial court on June 18, 1980, the New Jersey Supreme Court, on June 24, 1980, dismissed the within appeal on respondent's motion (App. A, infra, p. 1a), dismissed Petitioner's motion for summary reversal (App. B, infra, p. 2a), and dismissed Petitioner's cross-motion for certification nunc pro tunc (App. C, infra, p. 3a).

Petitioner filed a Petition for Recall and Rehearing, which was denied by the New Jersey Supreme Court on July 23, 1980. (App. D, infra, p. 4a).

REASONS FOR GRANTING THE WRIT

The first point to be made in this Petition is that Petitioner is not asking the U. S. Supreme Court to grant certiorari in order to review Connor v. Flynn on the merits. Petitioner is requesting that this Court grant certiorari to review certain actions of the New Jersey courts which have injuriously deprived Petitioner of his "due process" right to be substituted, as a non-party survivor, for deceased plaintiff Mary A. Connor in this case.

Petitioner's basic "due process" argument herein is that the Appellate Division of the Superior Court of New Jersey decided Connor v. Flynn before a necessary substitution of parties had occurred and also, when the appellate court lacked the necessary jurisdiction in the matter, its September 24, 1979 decision (App. K, infra, p. 18a) thereby substantially violating Petitioner's Fourteenth

Amendment "due process" rights.

The June 25, 1980 Order of the New Jersey Supreme Court, which is the subject of this Petition, dismissed Petitioner's appeal [Connor v. Flynn, Docket No. 16,605] on respondent's motion, which had argued for dismissal on the sole ground that "there had been no showing * * * of any substantial constitutional question."

Under New Jersey law, an appellant is entitled to a second appeal as of right only "where the record reveals a substantial rather than merely a colorable question arising under the federal or state constitutions that has not been the subject of a conclusive judicial determination." In re East Windsor Mun. Util. Auth. v. Shapiro, 57 N. J. 169, 170 (1970). The constitutional points raised must not be palpably insubstantial. Tidewater Oil Co. v. Mayor and Council of Cartaret, 44 N. J. 338, 342, 209 A.2d 105, 106 (1965).

Neither of the specific constitutional questions presented in this case and Petition has been the subject of a prior conclusive judicial determination. Moreover, the New Jersey Supreme Court's dismissal of Petitioner's appeal is in conflict with many decisions, discussed hereinafter, from other state courts of last resort, as well as federal courts of appeal, on the issue of what constitutes procedural "due process" under the Fourteenth Amendment.

* * * * *

Under the terms of the Last Will and Testament of Mary A. Connor, Petitioner receives deceased plaintiff's interest in the case entitled Connor v. Flynn. [In the trial court, plaintiff had already won $6408.80, while on appeal, plaintiff was attempting to reverse an adverse decision on a claim in excess of $200,000.]

Accordingly, Petitioner had a right, under R. 4:34-1(b) Non-Party Survivors, to be sub-

stituted as party-plaintiff.

R. 4:34-1(b) provides that:

> If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party * * *
> (emphasis added)

Accordingly, R. 4:34-1(b) is mandatory and must be complied with because Petitioner is an "indispensable party" to the litigation. An indispensable party is one without whose presence no adequate judgment can be entered determining the rights of parties before a court. Insurance Co. of North America v. Allied Crude Vegetable Oil Refining Corp., 89 N. J. Super. 518, 215 A.2d 579 (1965).

Such a party is so indispensable that "without his presence and binding adjudication as to his rights the court cannot proceed." United Lacquer Mfg. Corp. v. Maas & Waldstein Co., 111 F. Supp. 139 (U. S. D. C. 1953).

(emphasis added) Accord: Cobb v. Chatham Trust Co., 136 N. J. Eq. 191, 41 A.2d 137 (Ch. 1945). Allen B. DuMont Laboratories v. Marcalus Mfg. Co., 30 N. J. 290, 152 A.2d 841 (1959). Thatcher v. Jerry O'Mahony, Inc., 39 N. J. Super. 330, 121 A.2d 50 (1956).

The Appellate Division's September 24, 1979 final judgment deciding Connor v. Flynn is in conflict with two decisions from federal courts of appeal on this particular point. The Court of Appeals, Third Circuit, held in Chidester v. City of Newark, 162 F.2d 598 (C. A. 3) that an indispensable party was a party who has "such an interest in the controversy that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that a final determination may be wholly inconsistent with equity and good conscience." Id., at 598.

Furthermore, "[a]n absent party who has such a direct interest in the litigation * * *

is an 'indispensable party' if the court cannot render justice between the parties in his absence, if the decree will have an injurious effect on his interest, or if the final determination of the controversy in his absence will be inconsistent with equity and good conscience." Baird v. Peoples Bank & Trust Co. of Westfield, 120 F.2d 1001, 136 A. L. R. 693 (C. A. 3).

New Jersey courts have specifically held that "[w]hen a court of equity undertakes to settle a question at issue, it should do so effectively and permanently by bringing before it all parties necessary for that purpose." Garnick v. Serewitch, 39 N. J. Super. 486, 121 A.2d 423 (Ch. 1956).

As heretofore related by Petitioner (See: Statement, infra) New Jersey has neither a statute nor any court rule which mandates the probate of a will within a specific time period. Nor is there any rule requiring the substitution of a party, under R. 4:34-1(b),

within a certain time.

The fact of the matter is that, for the most part, since decedent's passing, Petitioner has been appealing the Administrator's May 26, 1978 appointment by the trial court and also appealing that administrator's December 4, 1979 probate of the Last Will and Testament of Mary A. Connor -- which appeals, under New Jersey probate law, have the operative legal effect of suspending not only the Administrator's powers but also the operation of the will, itself. Brown v. Ryder, 42 N. J. Eq. 358 (Prerog. Ct. 1886). Davenport v. Davenport, 68 N. J. Eq. 611 (E. & A. 1904). In re Norrell, 137 N. J. Eq. 207 (E. & A. 1945). State v. Williams, 9 Gil. 128 (Md. Ct. App. 1850).

Accordingly, only upon the final resolution of the aforementioned cases, would Petitioner be in a position to substitute himself for deceased plaintiff in Connor v. Flynn,

under R. 4:34-1(b), and that motion for substitution would have to be made, not in the Appellate Division, but in the Chancery (trial) court, where Connor v. Flynn was legally pending at the time of plaintiff's death.

Wherefore, because the Appellate Division of the Superior Court of New Jersey decided Connor v. Flynn prior to the substitution of Petitioner as party-plaintiff for decedent Mary A. Connor, Petitioner has been denied his "due process" right of substitution under R. 4:34-1(b) as a non-party survivor, in violation of the Fourteenth Amendment.

* * * *

The constitutional limitations in the XIV Amendment and in the "due process" limitations of the state constitution are designed to safeguard fundamental rights of persons and property against arbitrary and oppressive state action. Washington Nat. Ins. Co. v.

Board of Review of N. J. Unemployment Compensation Commission, 1 N. J. 545, 64 A.2d 443 (1949). "'[D]ue process of law' means, in the due course of legal proceedings according to the rules and forms which have been established for the protection of private rights..." (emphasis added) Sinclair v. Sinclair, 196 Tenn. 538, 268 S.W.2d 573, 575 (1954). Accord: Dupuy v. Tedora, 204 La. 560, 15 So.2d 886, 890 (1943). Dation v. Ford Motor Co., 314 Mich. 152, 22 N.W.2d 252, 258 (1946).

We have thus far seen the Appellate Division's failure to follow R. 4:34-1(b) when it decided Connor v. Flynn without Petitioner's substitution. More seriously, the Appellate Division lacked the necessary jurisdiction to even decide Connor v. Flynn.

As heretofore recounted in Petitioner's Statement, infra, at the point when decedent Mary A. Connor passed away on November 24, 1977, Connor v. Flynn was pending at the

trial court under R. 2:5-5(a) Motion to Settle the Record which specifically states that:

> If any party questions whether the record fully and truly discloses what occurred in the court or agency below, he shall apply on motion to that court or agency to settle the record * * * [t]he making of a motion pursuant to this rule shall toll the time for serving and filing the next brief due, but the remaining time shall again begin to run from the date of entry of an order disposing of such a motion. (emphasis added)

R. 2:9-1 Control Prior to Appellate Disposition provides:

> The supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed unless otherwise provided by rule. (emphasis added)

R. 2:5-5(a) is just such a rule whereby the filing of a motion to settle the record with the trial court "preempts" the appellate court's "supervision and control of the proceedings" (R. 2:9-1a) until the "date of entry of an order disposing of such a motion"

(R. 2:5-5a).

That the November 7, 1977 order of the trial court did not dispose of plaintiff's motion to settle the record is apparent from a reading of its terms, particularly Point 3, which provided that: "[p]laintiff's Motion to Settle the Record is continued pending the receipt of transcript." (App. E, infra, p. 5a)

As related in Petitioner's Statement, infra, at the time of plaintiff's death, not only had none of the reporters' certifications been amended but also one reporter had not transcribed the testimony of defendant's expert accounting witness. Additionally, the trial court had not decided plaintiff's motion to incorporate two tape recordings as evidence in the trial record to prove her allegations of transcript "doctoring" in Connor v. Flynn.

"Jurisdiction" is the authority of the law to act officially in the particular matter

at hand. Frazier v. Moffat, 239 P.2d 123, 108 C. A. 379 (2d Dist. Ct. App. 1951). If a tribunal is otherwise without jurisdiction over the subject matter of the case, even waiver or consent cannot confer it. De Feo v. Recorder's Court of the Town of Belleville, 129 N. J. L. 549, 30 A.2d 507 (1943). "If this power does not exist with reference to any particular case, its determination by the court is an absolute nullity." Norback v. Board of Directors of Church Extension Soc., 84 Utah 506, 37 P.2d 339 (1934).

Wherefore, because of the fact that decedent-plaintiff's R. 2:5-5(a) motion to settle the record in Connor v. Flynn had not been finally disposed of by the trial court when Mary A. Connor passed away on November 24, 1977, jurisdiction in the case remained with the trial court and the Appellate Division lacked the necessary jurisdiction to decide Connor v. Flynn on September 24, 1979. In consequence whereof, the

the final judgment of the Appellate Division is null and void.[5]

* * * * *

It has been held that "mere errors or irregularities in state court proceedings are not sufficient to show a clear, purposeful conspiracy to deny a [party] due process." Skolnick v. Spolar, 317 F.2d 857 (1963).

The record in Connor v. Flynn, however, is more than sufficient to establish the existence of a conspiracy between defendant and the courts to deny plaintiff and Petitioner "due process" in this case.

Basic, fundamental rights were constantly abridged in a continuing "brawl" to

[5] Noted in support of this argument is the conduct of Part "A" of the Appellate Division which declined to hear oral argument in this case on April 11, 1978 after being advised of its status (App. G, infra, p. 10a) versus that of Part "G" which proceeded to decide the appeal the following year.

destroy an appeal of the trial court's decision in Connor v. Flynn.

As heretofore related in Petitioner's Statement:

I. Defendant's counsel John A. Lombardi, Esq., filed a "doctored" transcript with the trial court to build a case of irrationality against Petitioner, in order to have him disqualified as plaintiff's counsel (Statement, infra, pp. 7-8);

II. Plaintiff's own attorney, Robert B. Cherry, Esq., was a party along with the Clerk of the Appellate Division, to a fraudulent scheme to destroy plaintiff's appeal of the trial court's judgment in Connor v. Flynn by substituting a meaningless appeal from the denial of a motion for a new trial for a "voided" appeal from the final judgment in this case(Statement, infra, pp. 8-10);

III. A total of $59,198.90 was removed from the Superior Court trust fund, set up by the court for Connor v. Flynn when the

Clerk of the Appellate Division deliberately delayed docketing plaintiff's pro se notice of appeal for an entire month (Statement, infra, pp. 11-13);

IV. The Appellate Division denied no less than six (6) motions of plaintiff to secure the transcript she needed for the prosecution of her appeal (Statement, infra, p. 14);

V. With one exception, none of the transcript certifications in Connor v. Flynn conforms to that required by the State of New Jersey's own regulations (Statement, infra, p. 15-16);

VI. Ira S. Rubenstein, C.S.R. failed, even under court order, to produce all the transcript he was accountable for, failing to transcribe the entire testimony of the defendant's expert accounting witness, Mr. Richard Goldfinger, C.P.A. (Statement, infra, pp. 17-18); and,

VII. Plaintiff and Petitioner had two (2) tape recordings to prove their charge of

transcript "doctoring" in Connor v. Flynn (Statement, infra, p. 17).

All of the above-listed "rollcall" violations of basic "due process" rights occurred while plaintiff Mary A. Connor was still alive and attempting to prosecute her pro se appeal of the trial court's decision in Connor v. Flynn.

The above-listed [I - VII] constitute many, but by no means all, of the "due process" violations accorded Mary A. Connor during her pro se prosecution of Connor v. Flynn.

In sum, they amounted to no less than a denial, by the New Jersey courts, of plaintiff's fundamental right, under R. 2:2-3, to an as of right review of the trial court's decision in Connor v. Flynn. For a state appellate court to deny, on six occasions, plaintiff's motion for the production of the transcript she needed to prosecute her appeal evidences a specific

intent to deprive the appellant her right of appeal.

Following plaintiff's death, the appellate court interfered with Petitioner's "due process" rights by deciding Connor v. Flynn without Petitioner's substitution as a party and without the necessary jurisdiction. See: Justice Clark's dissent in Williams v. Georgia, 349 U. S. 375, 399 (1955).

In a final but futile attempt to prevent further appellate review of Connor v. Flynn Petitioner was even arrested by the administrator, whose appointment was then under appeal, and, aided and abetted by the court, unlawfully seized decedent's will from his possession -- and delayed its probate for over two months until after the time had expired for taking an appeal of the Appellate Division's judgment in Connor v. Flynn (See: Statement, infra, pp. 23-27).

The real explanation for the Appellate Division's conduct is found in its "at-all-

costs" attempt to prevent the reversal of the trial court's judgment in Connor v. Flynn on grounds of transcript "doctoring" and the consequent necessity of preventing the introduction into evidence of Petitioner's tape recordings.

According to the Administrative Regulations Governing Reporters in the New Jersey Courts, all certified shorthand reporters must use the following certification:

> "I certify the foregoing to be a true and accurate transcript of the testimony and proceedings in the above-entitled cause."

A certified transcript has been held by the courts to be a "writing so signed and authenticated as to be legal evidence." People v. Foster, 58 N. Y. S. 574, 27 Misc. 576, 582 (Sup. Ct. 1899). Furthermore, the certificate testifies to the truth of the record and a " ...purported certificate which does not testify to the truth is really not a certificate." Mosely v. Carswell, 152 S.E.

856, 41 Ga. App. 267 (Ct. App. 1930).

According to Corpus Juris Secundum:

> "The certificate must show that the transcript as far as it goes, is the transcript of the record remaining in the lower court.... If the certification fails to recite that the transcript is complete or shows by its recitals that it is incomplete, the certificate is insufficient..."

4A C. J. S. Certifications, §30 at 1037.

Wherefore, when measured against the aforementioned standard, and the form of certification required by the Administrative Office of the Courts, the following transcripts are legally inadmissable as evidence in this case: [April 27, 1973 Transcript: Reporter Ellen Morris] certifies only to the accuracy of her "stenographic notes"; [July 30, 1973 Transcript: Reporter Ben Rose] similarly certifies only to "stenographic notes"; [March 13-14, 1972 Transcript: Reporter Ray Mastandrea] certifies only to "original stenographic notes"; [March 14, 1972 Transcript: Reporter Mastanrea] certifies to the accuracy of testimony

"as taken by me stenographically"; [March 15, 1972 Transcript: same reporter] certifies only to a "stenographic record"; [March 16, 1972 Transcript: Reporter James Applin], omitting any reference to "testimony" certifies only to "proceedings had in the above matter"; [March 21, 1972 Transcript: Reporter Ira S. Rubenstein] similarly omits any reference to "testimony"; [April 10, 1972 Transcript: Reporter Rust] certifies to "original stenographic notes * * * taken * * * to the best of [his] knowledge and ability"; [January 9, 1975 Transcript: Reporter Michele Henley] certifies only to her "stenographic notes." Not one of these certifications conforms to that required by the Administrative Office of the Courts in its regulations.

It is obvious that, criminal conduct aside, not one of the aforementioned transcripts is admissable in evidence on appeal in this case. It is further apparent that, with the introduction into evidence of the aforementioned (two) tape recordings, Connor v. Flynn can

only end in a new trial being ordered by an appellate court -- not in an affirmance of the trial court's decision.

* * * * *

That the intent of the New Jersey Supreme Court is to prevent a reversal of the decision in Connor v. Flynn on grounds of transcript "doctoring" is evidenced by the extreme rapidity with which that court, after taking no action on this appeal for six months, dismissed the appeal on June 24, 1980 one week after Petitioner filed a motion under R. 2:5-5(a) returning the case to the trial court (App. N, infra, p. 24a) for the specific purposes of adding the tape recordings to the trial record and ordering the production of critical, missing defense testimony by a certain reporter.

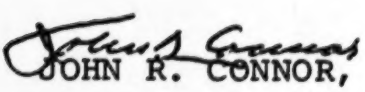
Under these circumstances, the New Jersey Supreme Court's action in dismissing Petitioner's appeal of the Appellate Division's affirmance of the trial court's decision in Connor v. Flynn, in the face of the two sub-

stantial constitutional questions presented herein, perpetuates the Appellate Division's violation of Petitioner's XIV Amendment "due process" rights and constitutes a (mis)use by the Supreme Court of a procedural "obstacle" to prevent a fair adjudication of Petitioner's as of right appeal on the merits.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



JOHN R. CONNOR, Pro se

12 October, 1980

APPENDIX A

ORDER OF THE SUPREME COURT OF NEW JERSEY
SUPREME COURT OF NEW JERSEY

Docket No. 16,605
(Decided June 24, 1980)

In the matter of

MARY A. CONNOR, Individually
and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff-Respondent,

v.

EDWARD J. FLYNN,

Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion to dismiss the appeal is granted.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of June, 1980.

/s/STEPHEN W. TOWNSEND,

Clerk

APPENDIX B

ORDER OF THE SUPREME COURT OF NEW JERSEY
SUPREME COURT OF NEW JERSEY

Docket No. 16,605
(Decided June 24, 1980)

In the matter of
(John Connor pro se-Movant)
MARY A. CONNOR, Individually
and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

This matter having been duly presented to the Court, it is ORDERED that the motion for summary reversal is dismissed as moot.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of June, 1980.

/s/STEPHEN W. TOWNSEND,
Clerk.

APPENDIX C

ORDER OF THE SUPREME COURT OF NEW JERSEY
SUPREME COURT OF NEW JERSEY

Docket No. 16,605
(Decided June 24, 1980)

In the matter of

(John Connor pro se-Movant)
MARY A. CONNOR, Individually
and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

This matter having been duly presented to the Court, it is ORDERED that the motion for certification nunc pro tunc on the Court's own motion is dismissed as moot.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 24th day of June, 1980.

/s/STEPHEN W. TOWNSEND,

Clerk.

APPENDIX D

ORDER OF THE SUPREME COURT OF NEW JERSEY
SUPREME COURT OF NEW JERSEY

Docket No. 16,605
(Decided July 21, 1980)

In the matter of

MARY A. CONNOR, etc.,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

This matter having been duly presented to the Court, it is ORDERED that the motion of John Connor for rehearing is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 21st day of July, 1980.

/s/STEPHEN W. TOWNSEND,
Clerk.

APPENDIX E

Mary A. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NO. C-2565-68

In the matter of

MARY A. CONNOR, Individually and as Executrix of the Estate of Mary Ellen Flynn,	:	Civil Action
Plaintiff-Appellant,	:	
-vs-	:	ORDER
EDWARD J. FLYNN,	:	
Defendant-Respondent.	:	

The matter came on for a hearing in the Superior Court, Chancery Division, Essex County, before the Honorable Arthur C. Dwyer, J.S.C. on October 21, 1977, Plaintiff appearing pro se, no appearance for respondents.

The court, having read Plaintiff's moving papers for relief under Rule 2:5-5(a) Motion to Settle the Record, and being ad-

vised of Reporter Ira Rubenstein's position that he will produce the outstanding transcript for March 20-21-22, 1972:

It is on this 4th day of November, 1977 ORDERED that:

1. Reporter Ira Rubenstein, C.S.R., turn over to Appellant and file with the Clerk of the Appellate Division, within 30 days, the transcript for March 20-21-22, 1972 in Connor v. Flynn, C-2565-68.

2. Reporters Raymond J. Mastandrea, Michele Henley, Ira Rubenstein, James G. Applin, William J. Rust, Samuel Vander Valk, Ellen Morris and Benjamin Rose advise Appellant, within 10 days, if they possess any stenographic notes for witnesses whose testimony remains untranscribed in Connor v. Flynn, C-2565-68, which testimony, if ordered by Appellant, shall be produced by the respective reporter(s) within 30 days of its being ordered.

3. Plaintiff's Motion to Settle the Re-

cord is continued pending the receipt of transcript.

IT IS FURTHER ORDERED that a copy of this order be served upon the respondent Certified Shorthand Reporters by certified mail or personal service within five days of the date hereof.

/s/ARTHUR C. DWYER, J.S.C.

APPENDIX F

SUPERIOR COURT OF NEW JERSEY
Appellate Division
State House Annex
Trenton, N.J.

March 8, 1978

TO:
Mary A. Connor, Pro se
380 Wyoming Avenue
Millburn, N. J. 07041

John A. Lombardi, Esq.
441 Springfield Avenue
Summit, N. J. 07901

CASE # A-2853-74

RE: Mary A. Connor v. Edward J. Flynn

The above entitled appeal will be called for argument on Tuesday, April 11, 1978 in the courtroom of the SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, PART A, at 10:00 a.m., Room 438, State House Annex, Trenton, N. J.

BEFORE JUDGES Lynch, Kole, Petrella

On appeals only, please endorse on the enclosed copy the name of counsel who will argue the appeal and the time he will require, and forward by return mail.

Yours very truly,

/s/ ELIZABETH MCLAUGHLIN
Clerk of the Appellate
Division
PHONE: 609-292-4822-23

Name of counsel:

Estimated time:

APPENDIX G

380 Wyoming Avenue
Millburn, N. J. 07041
10 April, 1978

Justice John F. Lynch, P.J.A.D.
Superior Court of New Jersey
Appellate Division - Part "A"
State House Annex
Trenton, N. J. 08625

Re: Connor v. Flynn, Docket No. A-2853-74

Dear Justice Lynch:

This letter will formally advise the Court that the above appeal, scheduled to be called before you for oral argument on Tuesday, April 11, 1978 at 10 a.m., is not ready for oral argument.

The Clerk of the Appellate Division has been advised of this fact on numerous occasions in the past several months -- but apparently to no avail.

I enclose herewith a copy of the last order, dated 11/7/77, entered in this case by Judge Arthur C. Dwyer, J.S.C. before whom this case was (and is still) pending, under R. 2:5-5(a), Motion to Settle the Record, at the time of the death of plain-

tiff Mary A. Connor on November 24, 1977.

Point 3 of this Order specifically provides that: "Plaintiff's Motion to Settle the Record is continued pending the receipt of transcript." In fact, much remains to be done at the trial level on correcting the record in this case, to mention only at this point the continuing failure of Reporter Rubenstein to obey this order and turn over the entire transcript for March 22, 1972. Missing is the entire testimony of Mr. Richard Goldfinger, C.P.A., accountant for the Defendant Flynn -- which testimony is absolutely essential for prosecution of this appeal.

Before formally substituting myself for plaintiff in this action, under R. 4:34-1b, there is going to be an inquiry into the suspicious circumstances surrounding the death of Mary A. Connor at the Overlook Hospital on November 24, 1977. Only upon the resolution of the proper "cause of death" on my mother's death certificate,

will I qualify as Executor and substitute myself as party-plaintiff.

In the meanwhile, be advised that I have applied to the Essex County Probate Court to be appointed Executor, in lieu of Mary A. Connor, of the Estate of Mary Ellen Flynn -- which is also a party to the above-entitled case.

Very truly yours,

/s/ JOHN R. CONNOR

cc: Attorney General Griffin Bell
U. S. Department of Justice
Washington, D. C. 20530

Governor Brendan Byrne
The State House
Trenton, N. J. 08625

APPENDIX H

SUPERIOR COURT OF NEW JERSEY
Appellate Division
State House Annex
Trenton, N.J.

July 17, 1979

TO: John R. Connor
380 Wyoming Ave.
Millburn, N. J. 07041

John Anthony Lombardi, Esq.
441 Springfield Avenue
Summit, N. J. 07901

CASE # A-2853-74

RE Connor v. Flynn

The above entitled appeal will be called for argument on Tuesday, September 11, 1979 in the courtroom of the SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, PART G, at 10:00 a.m. Room 217, Bergen County Court House, Hackensack, New Jersey.

BEFORE JUDGES

On appeals only, please endorse on the enclosed copy the name of counsel who will argue the appeal and the time he will require, and forward by return mail.

Very truly yours,

/s/ ELIZABETH McLAUGHLIN
Clerk of the Appellate
Division
PHONE: 609-292-4822-23

Name of counsel:

Estimated time:

APPENDIX I

380 Wyoming Avenue
Millburn, N. J. 07041
5 September, 1979

Justice Robert A. Matthews, P.J.A.D.
Superior Court of New Jersey
Appellate Division - Part G
Bergen County Courthouse
Hackensack, New Jersey

Re: Connor v. Flynn, Docket No. A-2853-74

Dear Justice Matthews:

I have received the attached notice from Ms. Elizabeth McLaughlin, Clerk of the Appellate Division, stating that the above appeal is scheduled to be called for oral argument before Part G on September 11, 1979 at 10:00 a.m.

I enclose herewith a copy of the last order, dated November 7, 1977, entered in this case by the Justice Arthur C. Dwyer, J.S.C., before this case was -- and still is -- pending, under Rule 2:5-5(a) Motion to Settle the Record, at the time of death of Plaintiff Mary A. Connor.

Jurisdiction, accordingly, remains with the trial court, pending final settlement

of this motion, and I will not appear before the court in the above matter on September 11, 1979.

Yours,

/s/ JOHN R. CONNOR

cc: J. A. Lombardi, Esq.
441 Springfield Avenue
Summit, New Jersey 07901

APPENDIX J

WESTERN UNION TELEGRAM

TO Justice Robert A. Matthews, P.J.A.D.

ADDRESS & TELEPHONE NO. Superior Court of New Jersey-Appellate Division-Part "G"

CITY-STATE & ZIP CODE Bergen County Courthouse, Hackensack, New Jersey

BE ADVISED THAT AT 8:00 A.M. THIS MORNING, SEPTEMBER 11, 1979, APPELLANT JOHN R. CONNOR SERVED A MOTION UNDER R. 1:12-2 TO DISQUALIFY YOU FROM A-4484-77.

FURTHERMORE, IF YOU TAKE ANY ACTION IN A-2853-74, BEFORE SUBSTITUTION OF PARTIES AND WHILE THAT CASE IS STILL PENDING AT THE TRIAL LEVEL, I WILL PROMPTLY FILE A CRIMINAL COMPLAINT AGAINST YOU FOR OBSTRUCTING JUSTICE.

/s/ JOHN R. CONNOR

APPENDIX K

JUDGMENT OF THE SUPERIOR COURT,
APPELLATE DIVISION
A-2853-74

MARY A. CONNOR, Individually
and as Executrix of the Estate
of Mary Ellen Flynn,

Plaintiff-Appellant,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

Submitted September 11, 1979 --
Decided Sep 24 1979

Before Judges Matthews, Ard and Polow

On appeal from the Superior Court,
Chancery Division, Essex County.

There was no appearance on behalf of
Mary Connor, pro se, who is now
deceased.

Mr. John Anthony Lombardi, attorney for
respondent.

PER CURIAM

The judgment of the chancery division is affirmed for the reasons expressed by the late Judge John A. Ackerman in his letter opinion dated November 20, 1974.

APPENDIX L

380 Wyoming Avenue
Millburn, N. J. 07041
28 October, 1979

Mr. George Warren, Esq.
112 Nassau Street
P. O. Box 645
Princeton, N. J. 08540

Re: Connor v. Flynn, Docket No. A-2853-74

Dear Mr. Warren:

Enclosed herewith are the following materials:

1- Notice of Appeal, dated 10/28/79, to the Supreme Court of New Jersey in the above-entitled matter;

1- Notice of Motion, of same date, to Reverse Final Judgment of Appellate Division;

1- Letter Brief and Appendix, of same date, to Support Notice of Motion to Reverse Final Judgment of Appellate Division.

You are the Administrator of the Estate of Mary A. Connor and, accordingly, are vested by law with the legal duty to protect and perfect decedent's litigation. In fact, you were present in the Bergen County Courthouse on September 11, 1979 when this appeal

was called for oral argument and are therefore chargeable with knowledge of its existence and status.

The 45-day period for filing this appeal expires on November 8, 1979 -- 6 days before the date you and Justice Gaulkin selected for the probate of my mother's will.

Therefore, in order to ensure that this appeal does not lapse because of inaction, I am hereby ordering you to sign and file the enclosed pleadings with the New Jersey Supreme Court [I. original of Notice of Appeal with $20.00 fee to the Supreme Court, copy with $5.00 fee to Appellate Division, copy to John A. Lombardi, Esq., attorney for respondent Flynn; II. original of Notice of Motion and Letter Brief with Appendix to be filed with the Supreme Court, copies to be served on respondent].

I am also ordering you to serve and file the appropriate number of copies of said pleadings, briefs, appendices, etc. with the court and respondent, in accordance

with R. 2:6-12(a)(c).

I further advise you that I will be responsible for all costs in connection with this filing and that you are not authorized to make any substantive changes in any of the enclosed papers.

In view of the November 8, 1979 deadline, I herein order you to file this material forthwith and to advise me immediately of that fact, in writing.

Very truly yours,

/s/ JOHN R. CONNOR

APPENDIX M

November 8, 1979

Mr. John R. Connor
380 Wyoming Avenue
Millburn, New Jersey 07041

Re: Connor v. Flynn, A-2853-74

Dear Mr. Connor:

Your letter of October 28th was received November 1 while I was out of the office, hence the delay in this response. With respect to its content, I have no standing in my capacity as Administrator of the Estate of Mary A. Connor to file notices in a matter in which the plaintiff was your late mother individually and as Executrix of the Estate of Mary Ellen Flynn. The only way in which any pleading from me would be recognized would be if I were substituted for Mary A. Connor, individually. Not only was I unaware of any basis for an appeal of the Appellate Division judgment but, even if there were some basis, it would seem to me that you would be the last person, in

view of your position with respect to my appointment, that would have approved of my taking such a step. More to the point is the fact that the unanimous judgment was entered September 24, 1979. The only appeal available is not by motion to reverse (your headings) but by petition for certification. Under Rule 2:12, such petition must be filed within 20 days from the time of judgment. Consequently you are out of time. Nor did the documents you typed and sent me in any way comply with the requirement of that Rule. For all of the above reasons, I have not signed or filed the "Notice of Appeal... Notice of Motion..." nor the Brief you prepared for my signature. The two checks you enclosed payable to the Clerk of the Superior Court, one in the sum of $20.00 and the other in the sum of $5.00, are herewith returned.

Sincerely yours,

/s/ GEORGE WARREN

APPENDIX N

John R. Connor, Pro se Beneficiary,
Estate of Mary A. Connor
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NO. C-2565-68

In the matter of

MARY A. CONNOR, Individually
and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff-Appellant,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

Civil Action

NOTICE OF MOTION TO
SETTLE THE RECORD-Cont'd.
(R. 2:5-5a)

TO: Mr. John A. Lombardi, Esq.
441 Springfield Avenue
Summit, New Jersey 07901

Mr. Ira Rubenstein, C.S.R.
37 Mitchell Avenue
Piscataway, New Jersey 08854

Ms. Ellen Morris, C.S.R.
18 Jonquil Avenue
Fords, New Jersey 08863

Information only:
Clerk of the Supreme Court
State House Annex
Trenton, New Jersey 08625

PLEASE TAKE NOTICE that on Friday, the 18th of July, 1980 at 9:00 o'clock in the forenoon, or as soon thereafter as the matter can be heard, the undersigned Appellant will apply, under Rule 2:5-5a Motion to Settle the Record, to the Honorable Arthur C. Dwyer, J.S.C., Superior Court of New Jersey, Chancery Division, Essex County Courthouse, Newark, New Jersey 07102 for an order: 1) admitting into evidence in the within cause of action a tape recording of the August 17, 1973 hearing before the New Jersey Division of Alcoholic Beverage

Control and a tape recording of the April 27, 1973 motion hearing before the Honorable John A. Ackerman, J.S.C. and 2) ordering Ira S. Rubenstein, C.S.R. to transcribe the trial testimony of Richard Goldfinger, C. P. A., within 30 days, and holding him in contempt of court under Rule 1:10-2 for disobeying the court's order of November 7, 1977.

In support of this continuing motion, Appellant will rely, as heretofore, on all prior papers filed with the court in the matter and his Certification, dated 16 June, 1980, annexed hereto.

/s/ JOHN R. CONNOR

16 June, 1980

Certificate of Service

Appellant herein certifies that he has served a clear copy of the within motion upon all parties by mailing same, first-class mail, to their respective places of business.

/s/ JOHN R. CONNOR

16 June, 1980

APPENDIX O

John R. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

In the matter of

MARY A. CONNOR, Individually: Civil Action
and as Executrix of the
Estate of Mary Ellen Flynn, :

Plaintiff-Appellant, : AFFIDAVIT

v. :

EDWARD J. FLYNN, :

Defendant-Respondent. :

State of ~~New Jersey~~ PENNSYLVANIA)
) SS:
County of Philadelphia)

Personally appeared before me John R. Connor, who, first being duly sworn, upon his oath, deposes and says that:

1. I have read the facts set forth in the Statement to my Petition for a Writ of Certiorari, dated October 12, 1980, and I aver, of my own knowledge, that such facts are true and correct.

John R. Connor
(Signature of Affiant)

Signed and sealed
before me this 17 day of October, 1980

John J. Bilbee
Notary Public
State of ~~New Jersey~~ PENNSYLVANIA

JOHN J. BILBEE
Notary Public, Phila., Phila. Co.
My Commission Expires Aug. 23, 1982